

EXHIBIT C

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILLIAM M. BYRD,)
Plaintiff,)
)
v.) C.A. 04-11032-DPW
)
AVENTIS PHARMACEUTICALS, INC.)
and DEBRA EDMUNDS,)
Defendants.)

DEPOSITION OF **CHRISTINE L. LIST**, a
Witness called on behalf of the Plaintiff, taken
pursuant to the applicable provisions of the
Federal Rules of Civil Procedure, before Maureen
Nashawaty, a Notary Public within and for the
Commonwealth of Massachusetts, held at the
offices of Flavin & Koslowsky, 424 Adams Street,
Milton, MA, on Thursday, November 4, 2004,
commencing at 10:15 a.m.

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Boston, Massachusetts 02108
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1 A. Yes.

2 Q. When you went to hospital sales
3 representative, was that also in Philly?

4 A. Yes.

5 Q. Area Manager.

6 A. Where was that based?

7 Q. Yes.

8 A. New York.

9 Q. Area Manager for hospital sales?

10 A. Boston.

11 Q. Area Manager for field sales?

12 A. Boston.

13 Q. Regional Account Manager?

14 A. Boston.

15 Q. And Regional Sales Director?

16 A. Boston.

17 Q. Are you still presently in Boston?

18 A. Yes, I am.

19 Q. When did you become Deborah Edmunds'
20 Regional Sales Director?

21 A. When I became a Regional Sales Director
22 in 1999.

23 Q. Do you remember in 1999 the month, the
24 time period?

1 A. I don't.

2 Q. Okay.

3 A. I believe it was early 1999.

4 Q. Have you ever had a claim of
5 discrimination against you?

6 A. No.

7 Q. Have you ever had a claim or been
8 involved in a claim of discrimination against the
9 company that you are employed with, that you have
10 been involved with?

11 A. No.

12 Q. Can you give me a description of your
13 duties as a Regional Sales Director?

14 A. I manage a region and specifically
15 manage the area managers.

16 Q. Now, you testified that you are located
17 out of Boston?

18 A. Yes.

19 Q. Does your region, has it changed during
20 your time period as a regional sales director?

21 A. In what way?

22 Q. You testified that you were out of
23 Boston?

24 A. Yes.

1 Q. Is the Boston market the same?

2 A. It has changed multiple times.

3 Q. Multiple times?

4 A. Yes.

5 Q. So the territory has actually changed?

6 A. Yes.

7 Q. Has it changed -- in other words, as a
8 Regional Sales Director, when you have a
9 territory, does the territory stay the same,
10 actually let me rephrase that.

11 When you became a regional sales
12 manager, strike that, a Regional Sales Director,
13 who were your area managers?

14 A. I don't recall all of them by name.

15 Q. Can you try to list them?

16 A. I know Deb Edmunds, Jim DePaulo, George
17 Keefe, Dennis Falci.

18 Q. How do you spell Dennis' last name?

19 A. F-a-l-c-i.

20 I can't remember the rest of the names.

21 Q. Typically how many area managers do you
22 have?

23 A. Between 8 to 10.

24 Q. Between 8 to 10?

1 A. The company realigns and reassigned us
2 to different geographies.

3 Q. In other words, they re-evaluate it and
4 they say you can be more effective if you include
5 this in your territory and you eliminate this, so
6 it is a global thing as opposed to them simply
7 just periodically making changes for change sake?

8 MS. ACKERSTEIN: Objection. I am
9 just objecting to the form of the question but if
10 you can answer it, you can go ahead.

11 A. I don't know always why they change it.
12 That is not my decision to make.

13 Q. It just changes and you go with the
14 flow?

15 A. There are lots of different reasons
16 that they can change it.

17 Q. All right. As part of your duties as a
18 Regional Sales Director, do you do work-withs at
19 all?

20 A. Can you be more specific.

21 Q. Or drive with sales representatives?

22 A. I do.

23 Q. When would you do that?

24 A. That is not my primary responsibility,

1 so it varies.

2 Q. When would you do it?

3 A. There is no set pattern. I mean as I
4 get an opportunity to go out and work with the
5 sales associates I will do it, sometimes at the
6 request of the managers and sometimes at my own
7 personal need to just get out and to work in the
8 area with various area representatives just to
9 see what is going on in the marketplace.

10 Q. Would an Area Manager request you to do
11 a drive with or a work-with because they wanted
12 you to see how a sales rep was doing?

13 A. Yes.

14 Q. All right. Typically is it to show
15 that they are a good sales rep?

16 A. Can you define typically?

17 Q. In other words, under what
18 circumstances would they ask you to do a
19 work-with, in other words to evaluate it because
20 they had concerns with him?

21 A. There is a multitude of circumstances.

22 Q. Can you describe for me what those
23 circumstances are?

24 A. One would be because they are a high

1 performer and the manager would like me to see
2 their level of performance. One might be because
3 there are issues and concerns with their
4 performance. One might be because of a market
5 need or a customer circumstance that they would
6 like me to be able to experience or evaluate.
7 There are lots of different reasons.

8 Q. Is there any others other than the
9 three that you can think of?

10 A. Not that I can think of.

11 Q. Can you give me an example of a sales
12 rep that you went out with that was a high
13 performer?

14 A. There have been numerous.

15 Q. Can you name me one?

16 A. Very recently I worked with Ron Senez.

17 Q. And who asked you to?

18 A. Ron's Area Manager.

19 Q. Who is the Area Manager?

20 A. Kelly Shea.

21 Q. Anyone else?

22 A. Julie Wallis.

23 Q. Who is her Area Manager?

24 A. Jamie Wilson.

1 become a competent sales associate?

2 MS. ACKERSTEIN: Objection to the
3 form of the question.

4 Q. Are you saying that that has occurred
5 numerous times?

6 A. Yes.

7 Q. Can you identify how many times it has
8 happened with Deb Edmunds?

9 A. I -- you asked me, Deb doesn't work for
10 me any more.

11 Q. How long did Deb Edmunds work for you?

12 A. A very short period of time.

13 Q. Approximately how long?

14 A. I don't know the specific time.

15 Q. Can you make an educated guess?

16 A. It was the middle of March to the end
17 of that one year and then I was not her manager
18 for the remaining part of the following year. I
19 was her manager for subsequent to that for about
20 9 more months.

21 Q. All right. So from March to the end of
22 the year?

23 A. Yes.

24 Q. And that is in --

1 A. Three weeks she was on maternity leave.

2 Q. That was in 1999?

3 A. Yes.

4 Q. And not that year but the following
5 year for a nine-month period for 2001 I believe?

6 A. The tail end of 2001 to 2002.

7 Q. All right. During that time period,
8 did Deb share any observations of a sales
9 associate with you, other than that, strike that.

10 Did Deb Edmunds share her observations
11 of a sales associate where you brought the sales
12 associate in and began coaching them?

13 A. I can't answer the question the way you
14 have it. What do you mean when you say bring the
15 sales associate in and coaching them?

16 Q. You said that if a sales, strike that,
17 an Area Manager is having issues with a sales
18 associate, that it is a multi-phased process that
19 Aventis goes through, is that correct?

20 A. Yes.

21 Q. How many times and I believe you stated
22 or testified that the Area Manager would first
23 share his or her observations with you about the
24 issues regarding the sales associate?

1 A. Yes.

2 Q. During the time period that you were
3 the regional sales director in charge of Deb
4 Edmunds, how many times did she come to you or
5 ask you or share observations regarding a sales
6 associate with you?

7 A. All of the time.

8 Q. When you say all of the time, maybe if
9 you can help me, I understand as part of your
10 duties possibly as a Regional Sales Director is
11 that an Area Manager would provide you feedback
12 regarding the various different sales associates,
13 is that correct?

14 A. Correct.

15 Q. Is that what you are referring to as
16 all of the time?

17 A. Yes.

18 Q. All right. Is the typical feedback,
19 would you refer to that as typical feedback, in
20 other words, that is part of their
21 responsibilities to report to you regarding where
22 everyone is and what they are doing and what they
23 can improve?

24 A. Yes.

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1 A. I don't remember all of them.

2 Q. No, I understand. I just want the ones
3 that you remember?

4 A. There is actually two with the initials
5 J. S., B. P., D. H. -- those are the ones that I
6 can remember off the top of my head.

7 Q. And Bill Byrd?

8 A. And Bill Byrd.

9 Q. And you can recall any others right
10 now?

11 A. Not the specific initials.

12 Q. When you say not the specific initials,
13 you can't recall their names and, therefore, you
14 can't provide me with the initials?

15 A. Correct.

16 Q. Who was the first person to notify you
17 that they believed that they were having issues
18 with Bill Byrd?

19 A. Can you be more specific?

20 Q. At some point in time did someone
21 notify you that they were having problems with
22 Bill Byrd?

23 A. In what relationship?

24 Q. As a sales associate -- any

1 relationship?

2 A. In what capacity, in what was my
3 capacity?

4 Q. Has anyone ever come to you and
5 notified you that they believed that there were
6 issues with Bill Byrd?

7 A. Yes.

8 Q. Who were those people?

9 A. I can't, I can't specifically recall
10 all of the people involved or the names. It is
11 more of a general.

12 Q. Why don't we start with the people that
13 you do recall?

14 A. Sean Flanders.

15 Q. Who else?

16 A. Deb Edmunds.

17 Q. Who else?

18 A. I can't recall any other specific
19 names.

20 Q. When did Sean Flanders notify you that
21 there were issues with Bill Byrd?

22 A. I don't remember the specific time
23 frame.

24 Q. What was discussed?

1 A. I don't remember the specifics of what
2 was discussed. It was more of a general
3 reference.

4 Q. What was the general reference?

5 A. To his work performance and his -- just
6 his general day-to-day working in the territory.

7 Q. What was his comments regarding Bill
8 Byrd's work performance?

9 A. That they weren't what he had hoped
10 they would be.

11 Q. Did he have any other comments?

12 A. I don't remember specifically.

13 Q. Okay.

14 A. I think he -- no, I don't remember
15 specifically.

16 Q. Other than, strike that.

17 You also said working with him day to
18 day, did he have any comments regarding that?

19 A. I remember a general level of
20 frustration.

21 Q. He said he was frustrated?

22 A. Sean was frustrated as his manager.

23 Q. He told you he was frustrated as Bill
24 Byrd's manager?

1 A. Yes.

2 Q. Did he tell you why he was frustrated?

3 A. It related to Bill's not being at the
4 standard that Sean wanted him to be at from a
5 competency perspective.

6 Q. Do you recall him telling you anything
7 else?

8 A. I don't recall specifically.

9 Q. Do you recall when this -- was it one
10 conversation?

11 A. I don't recall.

12 Q. Could it have been more than one
13 conversation?

14 A. Yes.

15 Q. And do you recall when this
16 conversation took place?

17 A. I don't.

18 Q. Did you take any notes regarding this
19 conversation?

20 A. No.

21 Q. Do you recall where this conversation
22 took place?

23 A. I don't.

24 Q. You also said Deb Edmunds.

1 when there is a problem.

2 Q. So this is part of the multi phase?

3 A. Yes.

4 Q. All right.

5 MS. ACKERSTEIN: Maybe we should take
6 about a five-minute break and use the rest room,
7 is that all right?

8 MR. KOSLOWSKY: Sure.

9 (Short Recess, 11:45 to 11:50.)

10 Q. Can you state for me the reasons that
11 Bill Byrd was terminated?

12 A. Yes.

13 Q. Could you please state them?

14 A. Poor performance in terms of overall
15 job competency and not improving in his
16 performance, policy violations and falsification.

17 Q. Any other reasons -- when you say
18 falsification, is that falsification of records?

19 A. Falsification of expense reports and
20 records.

21 Q. Any other reasons?

22 A. Not that I recall.

23 Q. Poor performance, what was his poor
24 performance?

1 us having to counsel him on giving grants
2 directly to physicians or moneys to physicians
3 for charitable donations that was against our
4 policy. In terms of our expense reporting
5 policy, in terms of how he recorded expenses, his
6 recording of personal mileage, these all fall
7 under various policies.

8 Q. Anything else that you can recall?

9 A. Not that I can recall.

10 Q. Falsification of expense reports and
11 records?

12 A. Yes.

13 Q. Can you identify those for me?

14 A. The expense reporting policy was a
15 situation where he provided false information
16 around an expense that he had put on an expense
17 report, I believe it was related to a golf outing
18 and how he reported that, who was in attendance,
19 the amount of moneys that were spent. There was
20 issues with all of those areas.

21 Q. Any other issues?

22 A. With expense reporting.

23 Q. With regard to this event?

24 A. When you say other issues, can you be

1 more specific?

2 Q. I think you are referring to a specific
3 expense report regarding this golf outing, you
4 said how he, it was he reported on it falsely,
5 one of them is who was in attendance, you claim
6 that that was falsification of records, I believe
7 and the other is the amount of money that he
8 spent?

9 A. Yes.

10 Q. Is there any other reason that you
11 consider --

12 A. How he reported it.

13 Q. What did you mean by how he reported
14 it?

15 A. I don't believe he called it a golf
16 outing on his expense report.

17 Q. Anything else on that expense report?

18 A. Not that I can recall.

19 Q. Can you recall any other examples of
20 Mr. Byrd falsifying expense reports?

21 A. No.

22 Q. Any other examples of Mr. Byrd
23 falsifying expense, excuse me, falsifying
24 records?

1 A. Yes.

2 Q. What are those?

3 A. We identified issues with his call
4 reporting and his call activity.

5 Q. Anything else?

6 A. He was recording calls that he wasn't
7 making in his --

8 Q. What do you mean reporting calls that
9 he wasn't making?

10 A. In his computer he would record a call
11 that he didn't make.

12 Q. When -- you are saying that he didn't
13 physically go to the doctor's office or that what
14 you considered to be -- in other words, or he
15 went to the doctor's office but it didn't meet
16 the criteria of Aventis, do you understand the
17 distinction?

18 A. No.

19 Q. When you say that he was putting down
20 calls that he wasn't making, can you describe for
21 me what you mean by that?

22 A. We have a specified definition of what
23 constitutes a call.

24 Q. Yes.

1 he had been with the company and had been working
2 with those specific products.

3 Q. Has anyone else at Aventis ever
4 misstated product information either at sales
5 calls or at what did you call them -- in a group
6 setting?

7 A. In front of his peers?

8 Q. In front of his peers..

9 A. Can you ask the question again?

10 Q. Are you aware of any other sales
11 representative for Aventis that might have
12 misstated product information either at a
13 doctor's office or in front of their peers?

14 A. Yes.

15 Q. Is that I don't want to say common but
16 that is not an abnormal occurrence, correct?

17 MS. ACKERSTEIN: Objection.

18 A. I am not sure I can answer your
19 question the way you asked it.

20 Q. These other people that misstated
21 product information, were they terminated?

22 A. Yes.

23 Q. All of them were?

24 A. I can't answer that question the way it

1 knowledge, I believe you testified, well, they
2 are not terminated for lack of product knowledge,
3 it is, I am kind of assuming here you are saying
4 that then we go and try to improve their
5 competency and it is a question of how they
6 respond to the coaching, is that correct?

7 A. Correct.

8 Q. Are you aware of any examples of people
9 who have been terminated who didn't adhere to the
10 coaching so to speak?

11 A. Yes.

12 Q. Who?

13 MS. ACKERSTEIN: Just initials or
14 what you can recall.

15 A. Of the ones that I can recall, J. S.,
16 J. S., B. P.

17 Q. What about D. H?

18 A. I don't recall.

19 Q. All right. Territory management, what
20 do you mean by territory management? You said he
21 was terminated for territory management?

22 A. Are you asking me what is the
23 definition of territory management?

24 Q. Well, I suppose it is -- one of the

1 reasons you gave for poor performance and
2 competency areas or termination, I guess a lack
3 of competency and you stated that territory
4 management was one of the reasons.

5 I am trying to find out what you
6 considered to be where Mr. Byrd was lacking with
7 regard to territory management which resulted in
8 his termination?

9 A. Well, first of all, I would want to go
10 on the record and say all of these are not stand
11 alone. These are all things that he was coached
12 on and did not respond to and that is why in
13 these cases -- in this case it led to
14 termination. It wasn't the incident itself.

15 In terms of territory management it was
16 the recording of the call activity at the point
17 of the call being made and recording of effective
18 call notes. It was effective management of his
19 samples. It was working together effectively
20 with teammates.

21 Q. Anything else?

22 A. I think that that covers it.

23 Q. Recording call activity at point of
24 call. What is that?

1 A. It means that the, our policy states
2 that the interaction with the physician should be
3 recorded at the point in time that it occurs
4 including the call notes and the sampling
5 activity.

6 Q. Okay.

7 A. It also requires the representatives to
8 transmit on a daily basis.

9 Q. All right. So recording call activity
10 at point of call, you include that effectively
11 call notes or was that something separate?

12 A. That is separate.

13 Q. All right. Is it your testimony that
14 the point of call is supposed to be done
15 immediately after the call, is that -- am I
16 hearing you correctly?

17 A. That is the company policy, yes.

18 Q. Is there any reason to not do it
19 immediately after the call?

20 A. I suppose there could be.

21 Q. Could you give me an example of one?

22 A. When you say any reason, can you tell
23 me more specifically what you mean by that?

24 Q. What would be acceptable for you for

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1 THE WITNESS: Yes.

2 A. J. S., J. S., M. G., F. S.

3 Q. I'm sorry, what?

4 A. F. S.

5 Q. Anyone else?

6 A. There have been numerous others, I just
7 can't recall their initials.

8 Q. B. P?

9 A. No.

10 Q. D. H?

11 A. I don't recall.

12 Q. When you say numerous others, you can't
13 recall their names?

14 A. Correct.

15 Q. Were these individuals terminated as a
16 result of this?

17 A. Which individuals?

18 Q. Any one of these that you have now
19 named?

20 A. Can you be more specific in terms of
21 were they terminated because of --

22 Q. Because of recording call activity at
23 the point of call?

24 A. As an isolated reason for termination?

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1 Q. As one of -- either an isolated or one
2 of many grounds?

3 A. Yes.

4 Q. Who were those?

5 A. I just gave you their initials.

6 Q. Is it J. S., J. S., M. G., F. S?

7 A. Not M. G. or F. S.

8 Q. They are still with the company?

9 A. No.

10 Q. Did they leave?

11 A. Yes, they did.

12 Q. So M. G. is no longer with the company
13 and F. S. is no longer with the company?

14 A. Correct.

15 Q. Do you recall if they were put on 45
16 day plans, M. G. and F. S?

17 A. M. G. was not and F. S. was.

18 Q. What about the numerous other people
19 that you don't recall, do you know if they were
20 terminated?

21 A. I don't recall.

22 Q. Do you recall whether or not they are
23 still with the company?

24 A. I don't recall. They may -- as I

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1 explained to you before, I moved in and out of
2 various positions so I may not have continued in
3 their developmental process to see it through to
4 the end so I wouldn't know necessarily what
5 evolved.

6 Q. Are there any of the individuals who
7 you have identified, were any of them minorities?

8 A. Of those?

9 Q. Of the ones that you have identified
10 for recording call activity?

11 A. No.

12 Q. Were any of them over 40 years of age?

13 A. Yes.

14 Q. Which ones?

15 A. J. S. and B. P.

16 Q. You also put down effective call notes,
17 not recording effective call notes, what is that
18 -- did I say that right, not recording effective
19 call notes?

20 A. Yes.

21 Following the conclusion of the call
22 with the physician, the representatives are
23 supposed to include a note in their computer that
24 is shared with their teams that would reflect

1 A. They are records that are provided to
2 us from our internal E.S. Department or
3 I.S. Department that would make those records
4 available to us.

5 Q. What is the I.S. Department?

6 A. Our Computer Department.

7 MR. KOSLOWSKY: I want to take a
8 quick break. I just want to grab something.

9 MS. ACKERSTEIN: Sure.

10 (Recess 12:17 p.m. to 12:20 p.m.)

11 Q. I think you said that the next thing
12 was effective management of samples. What do you
13 mean by that?

14 A. It is the management of the samples
15 that the representatives have in hand to
16 distribute to their customer.

17 Q. And what does it mean -- how does one
18 effectively manage the samples?

19 A. They record the specific number of
20 samples that they give in any given call and they
21 have to then reconcile that amount on a weekly
22 basis to what the company sends them per FDA
23 regulations.

24 Q. Has it always been on a weekly basis?

1 A. They are required quarterly to
2 reconcile. The weekly reconciliation if -- it
3 depends on if we have had problems with people's
4 ability to reconcile.

5 Q. And what was Mr. Byrd's issue with not
6 effectively managing samples?

7 A. In terms of what he would say it was or
8 what the company would say?

9 Q. What you would say?

10 A. We would receive notification from the
11 company that he was missing samples and couldn't
12 account for them.

13 Q. Is that called a sample variance?

14 A. Yes.

15 Q. Would you personally receive this
16 notification from the company?

17 A. Not necessarily.

18 Q. Who would this notification from the
19 company come from?

20 A. Who would it come from?

21 Q. I'm sorry, go to?

22 A. The Area Manager and to Bill Byrd
23 directly.

24 Q. And as I understand it, if someone has

1 Q. When he informed you that he entered a
2 call when he did not see the person --

3 MS. ACKERSTEIN: Asked and answered.

4 Q. -- can you identify the doctor that he
5 didn't see?

6 A. Not off the top of my head.

7 Q. Okay. I am going to show you a
8 document and ask you if you can recognize it?

9 A. I don't.

10 MR. KOSLOWSKY: Actually, can I get
11 this marked as Exhibit No. 3.

12 (Exhibit No. 3, Call Notes/Katz, was
13 so marked.)

14 Q. You testified that Bill didn't
15 effectively record call notes?

16 A. Yes.

17 Q. Are these the call notes that a sales
18 associate would record?

19 MS. ACKERSTEIN: Objection.

20 A. I don't understand your question.

21 Q. Where would they record their call
22 notes?

23 A. In their computer.

24 Q. What is the name of that computer?

1 A. The Jornada.

2 Q. The Jornada?

3 A. Yes.

4 Q. Does that record it?

5 A. I don't understand your question.

6 Q. As I understand it, the purpose of
7 recording the call notes is that, and correct me
8 if I am wrong, when a sales associate calls on a
9 doctor, he inputs it into the computer, the call
10 notes and then there is a runny tally of everyone
11 in his team that is going to see the same doctor,
12 so when a teammate wants to look at what type of
13 activities is happening with a particular doctor,
14 he can get the call notes and see what are other
15 sales associate in his team did and what they
16 discussed, etc., etc?

17 MS. ACKERSTEIN: Objection.

18 Q. Is that correct?

19 A. Yes, it can be correct, yes.

20 Q. What is the purpose of call notes?

21 A. To share the information that is
22 discussed in the call and it can be to give
23 direction forward to the next associate in terms
24 of what they should be discussing with that

1 physician the next time they see them or for the
2 same person to have a note to remind them of what
3 they would like to talk to them about the next
4 time they see them.

5 Q. You have testified that Aventis has a
6 criteria for what constitutes a call, correct?

7 A. For what constitutes a call?

8 Q. Yes.

9 A. Yes, yes.

10 Q. And they need to input that information
11 on the call, is that correct?

12 A. What do you mean they need to input
13 that?

14 Q. They need to record it?

15 A. What do you mean by they need to.

16 Q. Call note -- what is a call note?

17 A. A call note is whatever the
18 representative wants it to be. We give them
19 direction on what it should be but there isn't a
20 written definition of what that call note should
21 be.

22 Q. Is there a written definition as to
23 what a call is?

24 A. Yes.

1 Q. And could you identify for me what
2 Aventis' policy is as to what constitutes a call?

3 A. A call needs to be a face-to-face
4 discussion of the product that would include some
5 component of the marketing message with that
6 customer.

7 Q. Now, if a person didn't have a
8 face-to-face discussion -- client or physician of
9 the product that would include a marketing
10 message -- would that enter that as a call?

11 A. They should not.

12 Q. They should not?

13 A. Yes.

14 Q. Are you aware --

15 A. Can I clarify that?

16 Q. Yes, sure.

17 A. They should not enter it as a detail
18 call.

19 Q. All right. What is the difference
20 between a detail call as opposed to a call?

21 A. A call is a general term. There is
22 lots of things that can occur during a call with
23 a physician.

24 Q. Can you identify those for me?

1 A. They may leave samples in the office.
2 They may interact with the office staff. They
3 may interact with the physician but not share
4 product information with the physician.

5 Q. Okay.

6 A. When they enter in a detail call on the
7 computer, they are required specifically to check
8 off the products that they talked about and the
9 emphasis that was placed on those products.

10 Q. So you have a detail call which is a
11 face-to-face discussion with a doctor of the
12 product with a marketing message?

13 A. Correct.

14 Q. You have just an interaction with a
15 doctor, that is a type of a call but it is not a
16 detail call?

17 A. Correct.

18 Q. And you have interaction with the
19 office staff?

20 A. Correct.

21 Q. That is when you don't have any --

22 A. Correct.

23 Q. And you have a situation where you
24 leave samples?

1 A. Yes, or any combination of the above.

2 Q. Or any combination of the above?

3 A. Yes.

4 Q. How many detail calls is a sales
5 associate required to make in a day?

6 A. What do you mean by required?

7 Q. Is there a quota?

8 A. No.

9 Q. So if they don't make any detail calls
10 in a day -- how many calls in a day are they
11 supposed to make?

12 A. The expectation is that they make
13 eight.

14 Q. That they make eight?

15 A. Yes.

16 Q. And those eight calls can consist of
17 leaving samples?

18 A. Yes.

19 Q. Interacting with the office staff?

20 A. No, the expectation or the goal that we
21 set for them is that they have eight face-to-face
22 interactions that include product discussions.

23 Q. So is that a detail call then?

24 A. Yes.

1 Q. So the expectation or goal is to do 8
2 detail calls a day?

3 A. Yes, the goal.

4 Q. The goal?

5 A. Yes.

6 Q. All right. I want you to look at
7 Exhibit 3, what has been marked as Exhibit 3?

8 A. Yes.

9 Q. And I want you to see where it says
10 note text?

11 A. Yes.

12 Q. I understand a portion of this has been
13 cut off, this is what has been produced to us?

14 A. I don't know.

15 Q. A portion has been cut off?

16 A. I don't know.

17 Q. I think you will see it as we go
18 through it.

19 Can you highlight on here -- go down --
20 actually why don't I do it this way too.

21 Go down this and with the yellow
22 highlighter, highlight the call or the note made
23 here which qualifies under Aventis policy as a
24 detail call?

1 A. I reviewed the actual detail activity
2 of what he entered into the computer.

3 Q. Is there a different report that will
4 provide -- in other words, when a sales associate
5 comes out of a doctor's office and he records the
6 call notes, as I understand it, you said that he
7 doesn't necessarily have to put down that he
8 spoke about Allegra and provide the typical
9 marketing message, is that correct?

10 MS. ACKERSTEIN: Objection.

11 A. You need to clarify that question.

12 Q. What notes is a sales associate
13 required to make for Aventis after they make a
14 call whether it is leaving samples, interacting
15 with the office staff?

16 A. What is your definition of notes?

17 Q. I am asking you what your definition of
18 notes is. Is there a requirement at Aventis?

19 A. This is the note.

20 Q. This is the note right there?

21 A. Yes, that is entered into the computer.

22 Q. That is entered into the computer?

23 A. Yes.

24 Q. Is there any other notes other than

1 this right here that the sale associate is
2 required to enter into the computer?

3 A. Not notes.

4 Q. What are they required to enter?

5 A. Their toggle activity -- that they
6 check off so they know, yes or no, did I make a
7 detail call, and they check off which detail call
8 they made and what product they made it on and
9 they check that box in the computer.

10 Q. All right.

11 A. It is not a subjective note that they
12 enter. And they also enter in the quantity of
13 sample that is left for that particular
14 physician.

15 Q. So other than checking off these
16 toggles, is there any other message or notes made
17 in connection with the call?

18 A. I don't believe so.

19 Q. All right. So when you entered in the
20 call or the call notes, you don't necessarily put
21 in in detail what the product you discussed and
22 the marketing message was?

23 A. Yes, you do.

24 Q. You do?

1 A. If you enter in a detail call, that
2 means that you discussed the product.

3 Q. All right. What I am saying is --

4 A. You can enter in a call without
5 clicking off a detail call in the call.

6 Q. Correct.

7 But if Bill Byrd checks off that he is
8 making a detail call and then he puts in his call
9 notes that he discussed the doctor's, you know,
10 weekly fishing trips, etc., etc., would that
11 qualify? Is that an appropriate note to put in?

12 A. What is your definition of appropriate?

13 Q. Of Aventis?

14 A. Is it useful, no. Can he put it in,
15 yes.

16 Q. As I understand it, you said the sales
17 associate can put anything in there that they
18 think would be important?

19 A. Yes.

20 Q. And there is no criteria whatsoever as
21 to what the call notes must consist of?

22 MS. ACKERSTEIN: Objection.

23 A. What do you been by criteria?

24 Do we suggest to them what they should

1 put in there, what would be helpful -- yes, we
2 do.

3 Q. What does Aventis suggest that they
4 should put in there?

5 A. The suggestion should be around
6 promoting the product, what was discussed in the
7 promotion of the product and what would be useful
8 to themselves to remind them of what they would
9 like to accomplish the next time or what they
10 would like their teammate to accomplish.

11 Q. Are you testifying that Bill Byrd did
12 not put in what Aventis suggested?

13 MS. ACKERSTEIN: Objection.

14 Q. I'm trying to -- in other words, you
15 have informed me that you reviewed his call
16 activity and based on that, you made the
17 determination that he was recording as detail
18 calls things that were not detail calls?

19 A. Correct.

20 Q. How did you determine that?

21 A. The detail information that I mentioned
22 to you before.

23 Q. Yes.

24 A. Well, let me back up. Can you ask that

1 (Exhibit No. 5, Call Notes, was so
2 marked.)

3 (Exhibit No. 6, Call Notes, was so
4 marked.)

5 (Exhibit No. 7, Call Notes, was so
6 marked.)

7 (Exhibit No. 8, Call Notes, was so
8 marked.)

9 (Exhibit No. 9, Call Notes, was so
10 marked.)

11 (Exhibit No. 10, Call Notes, was so
12 marked.)

13 (Exhibit No. 11, Call Notes, was so
14 marked.)

15 Q. Exhibit No. 5, I am going to ask you if
16 you recognize that?

17 MR. KOSLOWSKY: I will give them to
18 you first.

19 A. What do you mean by recognize?

20 Q. Is that a report generated by Aventis?

21 A. Yes.

22 Q. And Aventis produced it today?

23 MS. ACKERSTEIN: Well, she doesn't
24 know that.

1 A. I have seen other reports like it.

2 Q. Similar?

3 A. Yes.

4 Q. What does that purport to show?

5 A. There is a couple of different things
6 that it shows. It shows the date that the call
7 was made. Who the call was made on, and it shows
8 that secondary and primary detail that we talked
9 about and whether or not there was a recorded
10 detail call and then the last column shows when
11 it says field, that means that they went home,
12 they didn't use their hand held computer in the
13 field, they took all of this information home and
14 recorded it when they got home rather than
15 recording it in the field on their smaller
16 computer.

17 Q. What does it say?

18 A. It says field. That is their large
19 home based laptop computer.

20 Q. All right.

21 A. The Tim Jr. means that they actually
22 recorded it on the small Jornada.

23 Q. All right.

24 A. And this column home office means when

1 it was transmitted, the date that the
2 transmission occurred.

3 Q. This is when it was recorded?

4 A. That is not when it was recorded. It
5 is when the call was made and the time it was
6 recorded.

7 Q. If I go in and I have a primary call or
8 a second call with is it Doctor Bloom?

9 A. Yes.

10 Q. This records when the call was made?

11 A. No, it records when it was entered.

12 Q. Okay.

13 A. He entered it at home on his home-based
14 computer at 6:15 p.m. on January 3rd and he
15 entered in a secondary and a primary call and we
16 don't know what those secondary and primary calls
17 are based on this report.

18 The question would be why at the home
19 versus his Jornada in the field which is what
20 they were required to do.

21 Q. But you said there were reasons why
22 they didn't have to do that, is that correct?

23 A. Exceptions.

24 Q. And this date right here, 1/4, that is

1 when it was transmitted?

2 A. That is when the home office computer
3 picks it up as a transmission and it is loaded
4 onto the main frame computer.

5 Q. Are you aware of any other sales
6 associates that would transmit their call
7 activity from their home computer or from the
8 field?

9 MS. ACKERSTEIN: Objection.

10 A. I don't understand the question.

11 Q. Have you ever reviewed these in
12 connection with any other sales associate of
13 Aventis?

14 A. Yes.

15 Q. And did those indicate that that sales
16 associate made transmissions from the field or I
17 guess from their home computer?

18 A. Some did.

19 Q. And were those sales associates that
20 were, strike that.

21 When would you typically review this
22 type of information on a sales associate?

23 A. When questions are raised as to their
24 day-to-day activity in the field or their issues

1 A. So it is pretty evident that he sat and
2 entered these calls in and I think if you went to
3 match it to one of the others, I think you would
4 find he did it on his home computer rather than
5 out in the field.

6 Q. Okay, all right. Anything else?

7 A. I would ask him about that.

8 Q. Okay. Anything else?

9 A. Not on this page.

10 Q. Okay. Anything else on Exhibit 8 --
11 and when I say anything else, assuming I
12 understand what that is, are there any other
13 issues aside from that?

14 MS. ACKERSTEIN: On the first page of
15 Exhibit 8?

16 MR. KOSLOWSKY: Yes.

17 A. No, not on the first page.

18 Q. Okay. Actually go through and look at
19 Exhibit 9.

20 A. Yes.

21 Q. And what is that, Exhibit 9?

22 A. This is a sample signature
23 verification.

24 Q. And what information does that tell us?

1 A. This tells us the date and the exact
2 time that the samples signature is gained.

3 Q. All right.

4 A. When the physician signs the computer.

5 Q. Okay.

6 A. And the other thing it tells us is it
7 will say either order form which all of these do
8 or it will say electronic.

9 Order forms means they got a paper
10 signature which is supposed to be the exception.

11 Q. All right.

12 A. They are not supposed to do that unless
13 there is an exception.

14 And they physically and manually enter
15 that into their home computer.

16 This electronic means that this
17 signature -- for instance, this 1/25/01, this
18 signature, I can't see the physician's last name,
19 this signature was gained from this physician at
20 12:03 p.m. and these are the samples that were
21 left with this particular physician.

22 Q. And that is 12:03 p.m. and that is what
23 was left?

24 A. Yes.

1 Q. Being above average, is that it?

2 A. Probably. I don't know that I would
3 say above average necessarily. I would just say
4 that it is something that I would think that they
5 were doing a particularly good job of.

6 Q. All right. At some point in time you
7 had a meeting with Bill Byrd and Deb Edmunds. Do
8 you recall that meeting?

9 A. Yes.

10 Q. Was it September 25th, following this
11 mid-year review?

12 A. It may have been.

13 Q. Did you have any communications with
14 Deb Edmunds in between the mid-year review other
15 than the one that you just told me and the
16 meeting with Bill Byrd on September the 25th?

17 A. I don't recall the specifics.

18 Q. You don't recall having any discussions
19 or you don't recall the specifics of discussions?

20 A. I don't recall the number of
21 discussions. I think you asked me how many
22 discussions I had with her. I don't remember. I
23 talk to the managers every day.

24 Q. During that meeting of September 25th,

1 Q. Can you describe for me what opinions
2 he voiced?

3 A. Can you be more specific?

4 Q. Bill requested a meeting with you to
5 voice as I understand it concerns he had with Deb
6 Edmunds?

7 MS. ACKERSTEIN: Objection, that is
8 not what she testified to.

9 Q. Why do you believe that Bill requested
10 this meeting?

11 A. Because he didn't agree with the
12 feedback that was given to him in his mid-year
13 review.

14 Q. And what did he say to you were his
15 issues with the mid-year review?

16 A. He didn't agree with them. He didn't
17 agree with Deb's assessment.

18 Q. Did you go through the mid-year review
19 with him at that meeting?

20 A. Can you be more specific with your
21 question?

22 Q. Did you go through it item by item, the
23 mid-year review?

24 A. No.

1 Q. How long did this meeting last?

2 A. About three hours.

3 Q. Who did most of the talking in the
4 meeting?

5 A. I encouraged Bill to do that. You
6 asked the question about who went through it. I
7 was prepared to go through the review with him
8 point by point but he had requested the meeting
9 so I wanted to him give the opportunity to bring
10 forward his concerns and his issues rather than
11 it being driven by my agenda. We did review
12 points of the review but I wanted to review the
13 points that he wanted to review.

14 Q. All right. Do you recall Bill telling
15 you that he had ongoing concerns with Deb
16 Edmunds?

17 A. Yes.

18 Q. Did he express to you what those
19 ongoing concerns were?

20 A. Not specifically.

21 Q. Generally?

22 A. I asked him to be specific and he
23 refused.

24 Q. Did he discuss them with you generally?

1 determine whether or not Bill Byrd it was being
2 discriminated against?

3 A. There was never an issue that was
4 specifically raised of discrimination that would
5 have required an investigation.

6 Q. So is the answer no?

7 MS. ACKERSTEIN: Objection.

8 A. Again, there was not an issue of
9 discrimination that was raised that would require
10 an investigation.

11 Q. Did you give a copy of this to Bill
12 Byrd?

13 A. No, I don't believe so.

14 MR. KOSLOWSKY: Can I get that
15 marked.

16 (Exhibit No. 14, Memo, 11/11/00, was
17 so marked.)

18 Q. In connection with this, when you were
19 taking notes, were you taking down any quotes
20 from Deb Edmunds during the meeting?

21 A. I don't recall specifically.

22 Q. Do you recall taking down any notes of
23 your quotes during the meeting?

24 A. I don't recall specifically. I believe

1 I reflected my responses to Bill here.

2 Q. All right. During that meeting, did
3 you discuss with Bill Byrd possibly doing a day
4 in the field with him?

5 A. Can you be more specific?

6 Q. Did you discuss with Bill Byrd doing a
7 day in the field?

8 A. What do you mean by discuss?

9 Q. Did the issue come up during this
10 meeting?

11 A. At Bill's request.

12 Q. What was Bill's request?

13 A. Bill's request was that I would come
14 out and spend a day in the field with him.

15 Q. Did Bill indicate to you that if your
16 assessment of him was in line with Deb Edmunds,
17 then he would happily follow the 45 day plan
18 given to him by Deb Edmunds?

19 A. I believe so.

20 Q. All right. And going back to Exhibit
21 No. 12, just the mid-year review, and you may
22 have already answered this -- you had a
23 discussion with Deb Edmunds about revising the
24 mid-year review, correct?

1 track of your samples?

2 A. Especially if there are multiple
3 variances, it is an administrative and compliance
4 issue for us.

5 Q. And after this -- at the meeting on
6 September 25th, Mr. Byrd said to you that he
7 wanted to go to on a ride with you, he wanted you
8 to spend a day with him?

9 A. Yes.

10 Q. And he said that he was prepared to
11 accept your judgment about things?

12 A. Yes.

13 Q. Did you have a conversation with Miss
14 Edmunds about what Mr. Byrd told you at the
15 meeting on September 25th?

16 A. Yes.

17 Q. And you also shared that information
18 with Miss Minassian in H.R.?

19 A. Yes.

20 Q. The decision to terminate Mr. Byrd was
21 made by you and Miss Minassian and Miss Edmunds?

22 A. Yes.

23 Q. Did somebody have a role and just
24 confirm with your Legal Department?

1 A. Yes.

2 Q. But you didn't do that?

3 A. No, Mailet did, the H.R. generally
4 interacts with the Legal Department.

5 Q. Okay. On these terminations?

6 A. Yes.

7 Q. Okay.

8 MS. ACKERSTEIN: Just give me a
9 minute.

10 (Short Pause.)

11 Q. What is the issue with the journal
12 clubs? What is a journal club?

13 A. The journal club in and of itself is
14 not -- a journal club is where a group of
15 physicians would get together and review data or
16 journal articles and will talk about them. They
17 may do a case discussion.

18 It is basically an opportunity for them
19 to get together to have a discussion among
20 themselves.

21 Q. So there is nothing per se wrong with a
22 journal club?

23 A. Correct.

24 Q. I gather what you are not supposed to

C O N F I D E N T I A L T E S T I M O N Y 205

1 Q. I take it that they look at the expense
2 reports and the purpose of this is to look at the
3 receipts and make sure it matches up?

4 A. I can't speak to what they do. I
5 haven't done that job.

6 Q. Are you aware -- other than J. S., are
7 you aware of any other sales associate that
8 submitted an expense report where the expense
9 that they put on there did not -- was greater
10 than the receipts that they provided?

11 A. Yes.

12 Q. Who else other than J. S?

13 A. I don't remember the person's first
14 name. Their last initial is Z.

15 Q. Was he or she terminated?

16 A. Yes.

17 Q. For the same thing?

18 A. Yes.

19 Q. Are you aware of anyone else doing
20 that?

21 A. Yes.

22 Q. Who else?

23 A. I don't remember her name specifically.

24 Q. Can you give me the initial?

1 Q. And at the time you testified, you did
2 not have in front of you performance reviews or
3 warnings or other documentation, is that right?

4 A. Correct.

5 Q. So this morning you were testifying
6 just from memory?

7 A. Correct.

8 Q. And when you just responded to
9 Mr. Koslowsky, you had in front of you, the
10 warning of November 10th, 2000 and the final
11 warning of September of 2001?

12 A. Correct.

13 Q. You are not altering your testimony
14 this morning about the grounds for termination,
15 are you?

16 A. No.

17 Q. These are just some additional specific
18 performance issues?

19 A. Yes.

20 Q. Mr. Koslowsky also just asked you about
21 the questionable expense reports and you said
22 that there was a golf issue, a fishing issue and
23 also an issue about a program that was over
24 budget that you can recall, do you remember that?

1 A. Yes.

2 Q. It is true, isn't it, that there were
3 actually two issues involving golf, am I correct
4 about that?

5 A. Yes.

6 Q. Because on September 25th, 2000 at a
7 meeting, you discussed one expense report that
8 Mr. Byrd had done improperly with respect to a
9 golf outing, is that correct? Do you recall
10 that?

11 A. I recall that we discussed how he was
12 recording these, the golf outings and how he was
13 doing that.

14 Q. Okay.

15 A. I don't recall the actual expense
16 report in question.

17 Q. Okay. But you did have a discussion
18 presumably because he reported a golf outing as a
19 hospital display?

20 A. Yes.

21 MR. KOSLOWSKY: Objection.

22 Q. And the other report that we discussed,
23 the expense report that I showed you earlier is
24 from June of 2001, is that correct?

1 A. Correct.

2 Q. So the one that you discussed in
3 September of 2000 and the one that was dated in
4 June of 2001, are two different incidences?

5 A. Yes.

6 Q. And you did discuss and I thought I
7 understood your testimony and then I wasn't sure
8 after Mr. Koslowsky asked you, it is accurate
9 that you had a conversation with Miss Minassian
10 after this meeting with Mr. Byrd and you talked
11 about what transpired?

12 A. Yes.

13 MS. ACKERSTEIN: Okay. I have no
14 further questions.

15 MR. KOSLOWSKY: That is it.

16 MS. ACKERSTEIN: Thank you very much.

17

18

19

20

21

22

23 (Whereupon at 4:05 p.m. the
deposition ended.)

24

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

I, Maureen Nashawaty, a Registered
National Reporter and Notary Public in and
Commonwealth of Massachusetts, do hereby
certify that the foregoing transcript of the
interview of **CHRISTINE L. LIST**, having been duly
transcribed and read to me on Thursday, November 4, 2004, is true and
accurate to the best of my knowledge, skill and

IN WITNESS WHEREOF, I have hereunto set
my hand and seal this 19th day of November, 2004.

Maureen Nashawaty
Maureen R. Nashawaty
Registered Professional Reporter

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